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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD


Proceeding	91215246
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Attachments	26928240_1_EMPIRE_S OPPOSITION TO LVGV_S CONSOLIDATION MOTION.PDF(243126 bytes)

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
THE TRADEMARK TRIAL AND APPEAL BOARD**



LVGV, LLC,	Opposer	: Opposition No.: 91215246
v.		: "M (stylized)"
		: Class 28
EMPIRE RESORTS, INC.,	Applicant	: Interlocutory Attorney: Andrew P. Baxley
		:

EMPIRE’S ANSWER IN OPPOSITION TO LVGV’S MOTION TO CONSOLIDATE

Empire hereby answers and opposes LVGV’s motion to consolidate this proceeding. In this opposition LVGV opposes registration of Empire’s application number 85/736,471 in Class

28 for the mark  (also referred to as “M (stylized)”). LVGV has moved to consolidate this opposition with five other opposition proceedings between LVGV and Empire.¹ For the reasons set forth herein, LVGV’s motion for consolidation should be denied.

SUMMARY OF THE ARGUMENT AGAINST CONSOLIDATION OF ANY OF THE PENDING OPPOSITIONS BROUGHT BY LVGV

Empire has filed six trademark registration applications, three each seeking registration of the instant mark  and three seeking registration of the mark  (also referred to as “Me. (stylized)”, on the principal register. Empire filed separate applications for each of the two marks in classes 28, 41, and 43. After Empire’s marks were published for opposition, LVGV

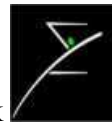
¹ The docket numbers of the five other opposition proceedings that LVGV seeks to consolidate with the instant proceeding are: 91215208; 91215212; 91215216; 91215247; and 91215415

filed separate oppositions, one against each of Empire's six applications, alleging likelihood of confusion. In each of the six oppositions LVGV asserted the same sixteen (16) LVGV registrations as likely to cause confusion with the Empire mark at issue, even though the two Empire marks are quite different from one another, as appears above, and even though the goods and services in Empire's six applications cover three classes and include a wide variety of goods.

LVGV now attempts to reverse its field, eschewing its previous decision to file separate oppositions against Empire's six applications. LVGV seeks a single consolidated proceeding against Empire's two different marks residing in three different classes, including in class 028 in which LVGV has no asserted registration. LVGV argues that consolidation of the six oppositions is appropriate because each of Empire's marks (which differ from one another as appear above) are likely to cause confusion with all sixteen of LVGV's registrations, even though the goods/services recited in LVGV's registrations in some cases are far afield from the goods for which Empire seeks registration of Empire's two different marks.

Empire's two marks, each seeking registration in classes 28, 41, and 43, are very different from one another in appearance, sound, and connotation. LVGV's sixteen registrations largely differ one from another with respect to the recited goods and services, and in some cases the marks differ significantly one from another in appearance, sound, and connotation.

In none of the six proceedings can LVGV argue that all of its sixteen marks are directly on point in the sense of exhibiting substantial appearance, sound and connotation similarity, and trade channel identity, with the relevant Empire mark. Several of LVGV's registrations are far,

far, off the mark. For instance, LVGV's registration 3,667,648 for this mark  in class 43, reciting "cocktail lounges; bar services" cannot reasonably be argued to present a likelihood of

confusion with Empire's



mark in class 28 seeking registration of “baby rattles”, “lawn bowling balls”, etc.

Many of LVGV's other registrations can be dismissed as irrelevant respecting any likelihood of confusion with the Empire mark at issue in a particular one of the six oppositions. As set forth at length below, each of the six proceedings will involve different arguably relevant² LVGV registrations, each of which will require different and unique analysis by this Board as to presence or absence of (i) visual similarity, (ii) aural similarity, (iii) connotation similarity, and (iv) trade channel relatedness. The only way for the Board to maintain clear demarcation and to avoid confusion as between and among (i) the two Empire marks, (ii) the three classes of goods in which Empire seeks to register its two marks³, (iii) the seven different marks that are the subject of the LVGV registrations, (iv) the goods and services recited in the sixteen registrations asserted by LVGV, and (v) the four different classes covered by the LVGV registrations, is to maintain the *status quo* and keep the six oppositions separate.





The Board should deny a motion for consolidation where the oppositions do not involve common questions of fact.⁴ Here, Empire's marks are visually distinct. Each Empire application for registration in each class, 28, 41, and 43, involves different goods presumed to move in different trade channels. Each of the six oppositions will likely involve differing groups of


² **For purposes of the instant motion only**, Empire concedes that some of the LVGV registrations are arguably relevant as respecting alleged *duPont* likelihood of confusion respecting Empire's mark that is the subject of this opposition. However **as respecting the determination of this opposition on the merits, Empire does not concede** that any of the sixteen asserted LVGV registrations are relevant as respecting LVGV's allegation of *duPont* likelihood of confusion.


³ Note that LVGV does not assert any registration in class 28, for which Empire seeks registration of its two marks. Among its group of sixteen registrations LVGV asserts U.S. 3,664,380 in class 44 and U.S. 3,977,752 in class 25. Empire has no interest in class 44 services nor in class 25 goods for purposes for its dispute with LVGV.

⁴ *S. Industries Inc. v. Lamb-Weston Inc.*, 45 U.S.P.Q.2d 1293 (T.T.A.B. 1997).

witnesses⁵ and unique discovery requests. Empire has already served differing discovery requests upon LVGV in four of the six oppositions, as per the following table:

Proceeding	Mark	Requests for Admissions	Interrogatories	Requests for Production
91215246	 Class 28	26	1	1
91215415	 Class 43	29	1	1
91215208	 Class 43	26	50	42
91215247	 Class 43	64	--	--

Additionally, in oppositions 91215212 and 91215216 involving Empire's marks  and

 respectively in class 41, Empire will serve comprehensive sets of requests for

⁵ Empire's initial disclosures for oppositions 91215246, 91215208 and 91215212 involving Empire's "M (stylized)" mark name different persons as having relevant knowledge than do Empire's initial disclosures for oppositions 91215415, 91215247 and 91215216 involving Empire's "Me. (stylized)" mark.

admissions, requests for production of documents and interrogatories, directed to the specific issues involved in these two oppositions, within the next several days.


Given the different questions of fact among the six oppositions, consolidation will result in no savings in time or expense; the same amount of presumably different physical evidence will be involved; different witnesses will testify; and consolidation will only serve to confuse matters, requiring even more time.

Additionally, the Board should deny a request for consolidation where, as here, consolidation will severely prejudice an applicant's ability to defend its marks.⁶ Consolidation will, among other things, severely hinder Empire's ability to differentiate and distinguish its six applications at issue from the sixteen registrations LVGV has asserted in each of the six oppositions. Consolidation will prejudice Empire, and work in LVGV's favor due to the resulting limitations on Empire respecting the number of interrogatories and briefing pages. Because Empire bears the burden of distinguishing Empire's marks from those of LVGV, any briefing page limitation and/or discovery restriction will disproportionately affect Empire's ability to defend its applications for registration.



When the substantive, procedural and equitable ramifications of consolidation are considered, it is clear that consolidation will be counterproductive as respecting this Board's decision making as well as being counterproductive respecting the time and resource expenditures of the Board and the parties. LVGV's consolidation motion should be denied.



⁶ *Envirotech Corp. v. Solaron Corp.*, 211 U.S.P.Q. 724, 1981 WL 40495, *1 (T.T.A.B. 1981).

THE OPPOSITION AGAINST EMPIRE’S CLASS 28 APPLICATION FOR EMPIRE’S

MARK  SHOULD NOT BE CONSOLIDATED BECAUSE THE OPPOSITION INVOLVES UNIQUE FACTUAL ISSUES, AND CONSOLIDATION WOULD PREJUDICE EMPIRE

Empire owns and operates resort facilities. Empire is currently constructing a new resort facility in Thompson, New York, called the “Montreign Resort Casino.” In connection with the branding of the new resort, casino, and related amenities, Empire filed, among others, the following six trademark applications between September 20, 2012 and September 25, 2012 (collectively, the “Empire Applications”):





Mark	Application No.	Class	Goods and Services
	85/733,861	28	Playing cards; dice; other playthings and sporting articles, namely, dolls, baby rattles, miniature toy cars, boats, trains, airplanes, rockets and spaceships; molded toy figurines; toy guns; water pistols; rubber balls; spinning tops; tennis balls and Plracquets; golf clubs and golf balls; beach balls; croquet mallets and balls; table tennis paddles and balls; lawn bowling balls; lacrosse sticks and balls; footballs; hockey pucks and sticks; board games; baseball bats, balls and gloves; softball bats, balls and gloves; badminton racquets; shuttlecocks; water polo balls; billiards and pool cues.
	85/736,471	28	Playing cards; dice; other playthings and sporting articles, namely, dolls, baby rattles, miniature toy cars, boats, trains, airplanes, rockets and spaceships; molded toy figurines; toy guns; water pistols; rubber balls; spinning tops; tennis balls and racquets; golf clubs and golf balls; beach balls; croquet mallets and balls; table tennis paddles and balls; lawn bowling balls; lacrosse sticks and balls; footballs; hockey pucks and sticks; board games; baseball bats, balls and gloves; softball bats, balls and gloves; badminton racquets; shuttlecocks; water polo balls; billiards and pool cues



Me.	85/734,289	41	Casino services; gambling services; entertainment services in the nature of live performances by singers, comedians, dancers, and musical groups; entertainment services in the nature of providing closed circuit and pay-per-view performances of concerts, performances by musical groups, and sporting events to resort guests; entertainment services in the nature of providing horse racing for wagering; entertainment service in the nature of providing facilities, coaching and instruction for personal exercise, fitness, and sporting endeavors in the nature of weight and endurance training, swimming, golf, tennis, hiking, horseback riding, skeet and trap shooting.
	85/736,924	41	Casino services; gambling services; entertainment services in the nature of live performances by singers, comedians, dancers, and musical groups; entertainment services in the nature of providing closed circuit and pay-per-view performances of concerts, performances by musical groups, and sporting events to resort guests; entertainment services in the nature of providing horse racing for wagering; entertainment service in the nature of providing facilities, coaching and instruction for personal exercise, fitness, and sporting endeavors in the nature of weight and endurance training, swimming, golf, tennis, hiking, horseback riding, skeet and trap shooting.
Me.	85/734,672	43	Resort hotel services; resort lodging services; restaurant, catering, bar, nightclub and cocktail lounge services; provision of general purpose facilities for meetings, conferences and exhibitions; provision of banquet and social function facilities for special occasions; and reservation service for hotel accommodations for others.
	85/737,435	43	Resort hotel services; resort lodging services; restaurant, catering, bar, nightclub and cocktail lounge services; provision of general purpose facilities for meetings, conferences and exhibitions; provision of banquet and social function facilities for special occasions; and reservation service for hotel accommodations for others.





Empire's '435, '289, '924, and '672 Applications were published for opposition on September 3, 2013. Empire's '861 and '471 Applications were published for opposition on October 1, 2013.

Rather than opposing the Empire Applications in one matter, LVGV elected to file six separate Notices of Opposition of differing lengths and content. For instance, LVGV's Notice of Opposition in this proceeding contained twenty-two paragraphs. LVGV's Notice of Opposition respecting Empire's other Class 43 mark, "Me. (stylized)", in proceeding 91215247, contained twenty-four paragraphs. Hence, LVGV raised different allegations between the two proceedings.

In its Notice of Opposition in this proceeding, LVGV asserts a likelihood of confusion between Empire's putative mark and sixteen LVGV registrations. Specifically, LVGV asserts the following different stylized and word mark registrations in opposition to the Empire application (collectively, the "LVGV Registrations"):

Mark	Registration	Class	Goods and Services
	3,411,031	43	Hotel services.
	3,628,876	43	Bar and restaurant services.
	3,544,752	43	Hotel, bar and restaurant services.
	3,627,974	41	Casinos; Arranging for ticket reservations for shows and other entertainment events; Entertainment in the nature of theater productions; Entertainment in the nature of visual and audio performances, and musical, variety, news and comedy shows; Entertainment in the nature of

			music concerts; Amusement arcades; Movie theaters; Night clubs; Health club services, namely, providing equipment in the field of physical exercise; Providing facilities for recreation activities; Conducting and providing facilities for special events featuring casino and gaming contests and tournaments; Special event planning.
	3,664,380	44	Barbershops; Beauty salons; Health spa services, namely, cosmetic body care services; Massage; Tanning salons.
	3747310	25	Caps; Footwear; Golf shirts; Hats; Jackets; Pants; Polo shirts; Pullovers; Robes; Shirts; Shorts; Slippers; T-shirts; Tank tops; Warm up suits.
M IS FOR ME	3,920,133	43	Restaurant, bar and catering services; cocktail lounges; restaurant, hotel and bar services, namely, customer loyalty programs that provide hotel, restaurant, and bar benefits to reward repeat customers; arena services, namely, providing facilities for sports, concerts, conventions and exhibitions; providing travel agency services, namely, making reservations and bookings for temporary lodging, restaurants and meals.
M IS FOR ME	3,894,290	41	Casinos; Conducting and providing facilities for special events featuring casino and gaming contests and tournaments; Entertainment in the nature of theater productions; Entertainment in the nature of visual and audio performances, and musical, variety, news and comedy shows; Entertainment, namely, live music concerts; Health club services, namely, providing equipment in the field of physical exercise; Night clubs; Providing facilities for recreation activities; Amusement arcades; Arranging for ticket reservations for shows and other entertainment events.
M IS FOR ME	3,512,483	43	Hotel services; Providing convention facilities.

	3,632,946	43	Restaurant services.
	3,667,648	43	Cocktail lounges; bar services.
	3,620,814	43	Hotel, restaurant and bar services; customer loyalty programs that provide hotel, restaurant, and bar benefits to reward repeat customers.
	3,620,816	41	Casino services; operation of a frequent casino players' incentive program.
M RESORT	3,896,121	41	Casinos; Arranging for ticket reservations for shows and other entertainment events; Amusement arcades; Conducting and providing facilities for special events featuring casino and gaming contests and tournaments; Entertainment in the nature of visual and audio performances, and musical, variety, news and comedy shows; Entertainment in the nature of theater productions; Entertainment, namely, live music concerts; Health club services, namely, providing equipment in the field of physical exercise; Night clubs; Providing facilities for recreation activities; Special event planning.
M RESORT	3,896,122	43	Hotel, bar and restaurant services.
M RESORT	3,977,752	25	Shirts; T-shirts.

Clearly, the LVGV Registrations are for numerous goods in various classes, including 25, 41, 43, and 44, have differing descriptions of goods and services and differing marks that differ significantly in sound and appearance.⁷

STATEMENT OF APPLICABLE LAW

Cases may be consolidated only when they share common questions of law or fact.⁸ In determining whether to consolidate proceedings, savings in time, effort and expense, which may be gained from consolidation, are weighed against any prejudice or inconvenience that may be caused thereby.⁹

THE NUMBER OF MARKS, GOODS AND SERVICES INVOLVED WILL NECESSARILY RESULT IN A CHAOTIC PROCEEDING IF CONSOLIDATION IS ORDERED

The evidence in this opposition will likely include testimony as to the visual and aural



differences as between Empire's class 28 mark and the marks that are the subject of LVGV's sixteen registrations, namely:

⁷ See, e.g., Exhibit A to the LVGV Notice of Opposition in matter 91215415.

⁸ *S. Industries Inc. v. Lamb-Weston Inc.*, 45 U.S.P.Q.2d 1293 (T.T.A.B. 1997) (consolidating a matter with identical marks at issue and virtually identical pleadings). In the matter at hand, the marks at issue vary and LVGV's Notices of Opposition are noticeably different with respect to Empire's "M (stylized)" and "Me. (stylized)" marks. Specifically, as noted above, LVGV's Notices of Oppositions pertaining to Empire's "M (stylized)" mark in Classes 28, 41, and 43 contain twenty-four paragraphs. LVGV's Notices of Oppositions pertaining to Empire's "Me. (stylized)" mark in Classes 28, 41, and 43 contain only twenty-two paragraphs. Therefore, LVGV has raised different allegations respecting Empire's "M (stylized)" and "Me. (stylized)" marks in the pleadings.

⁹ *Lever Bros. Co. v. Shaklee Corp.*, 214 U.S.P.Q.2d 654 (T.T.A.B. 1982) (denying consolidation where underlying cases in differing procedural stages); *Envirotech Corp. v. Solaron Corp.*, 211 U.S.P.Q. 724, 1981 WL 40495, *1 (T.T.A.B. 1981) (denying consolidation as prejudicial to the defendant where, as here, the underlying marks at issue were different); *Izod, Ltd. v. La Chemise Lacoste*, 178 U.S.P.Q. 440 (T.T.A.B. 1973) (denying consolidation where issues differed).




M IS FOR ME




M RESORT

This evidence is likely to be confused by witnesses, counsel and this Board with similar

testimonial evidence as between Empire's other class 28 mark, , and the same seven LVGV marks above that are the subject of LVGV's sixteen registrations, to say nothing of the evidence regarding LVGV's sixteen registrations vis-à-vis Empire's marks in classes 41 and 43.


The evidence in this proceeding will likely further include testimony as to the relationship, if any, between Empire's recited class 28 goods, namely "playing cards; dice; other playthings and sporting articles, namely, dolls, baby rattles, miniature toy cars, boats, trains, airplanes, rockets and spaceships; molded toy figurines; toy guns; water pistols; rubber balls; spinning tops; tennis balls and racquets; golf clubs and golf balls; beach balls; croquet mallets and balls; table tennis paddles and balls; lawn bowling balls; lacrosse sticks and balls; footballs; hockey pucks and sticks; board games; baseball bats, balls and gloves; softball bats, balls and gloves; badminton racquets; shuttlecocks; water polo balls; billiards and pool cues" and, for



instance, the services offered by LVGV under LVGV's mark , namely the class 43 "hotel, restaurant and bar services; customer loyalty programs that provide hotel, restaurant and bar benefits to reward repeat customers" services recited in LVGV's 3,620,814 registration.

The same could be said as respecting testimony regarding the relationship, or lack thereof, between Empire's class 28 goods and the goods associated with LVGV's 3,667,648



registration for LVGV's mark , namely LVGV's class 43 "cocktail lounges; bar services".

The same could also be said as respecting testimony and evidence regarding the relationship, or lack thereof, between Empire's class 28 goods and the goods recited in LVGV's



3,894,290 registration for LVGV's mark  in Class 25, which are "shirts; t-shirts."

By way of further example of differing evidence between the two class 28 proceedings, the same differing analysis applies between Empire's two marks in class 28 and LVGV's class



43 mark for "hotel services; providing convention facilities."

Given these extreme differences between the marks at issue and the potential testimony and exhibits respecting Empire's two class 28 marks as compared to LVGV's seven marks and sixteen registrations, consolidation is inappropriate.

Each of the six opposition proceedings will similarly require separate analyses, which will involve differing evidence, regarding whether the parties' respective goods and services are related as well as whether each applicable Empire mark's appearance, sound, meaning, and commercial impression are likely to cause confusion. The only way the witnesses, counsel and this Board will be able to reasonably keep track of the applicable LVGV registration asserted against the Empire mark at issue in each of the six opposition proceedings is to keep each matter separate.

CONSOLIDATION IS INAPPROPRIATE BECAUSE EACH OF THE SIX OPPOSITION PROCEEDINGS IS FACTUALLY UNIQUE.

It is well-settled that consolidation is inappropriate where, as here, the cases do not involve the same facts.¹⁰ As seen in Empire's Amended Initial Disclosures, Empire's two marks, "M" (stylized)" and "Me. (stylized)", will probably not involve the same witnesses. Specifically, Empire's marks involving "M (stylized)" mark was primarily developed by Star Group employee Maria Bompensa. Empire's "Me. (stylized)" mark, on the other hand, were primarily developed by Matthew Schetter. The records in each proceeding will be different. Because the various proceedings are factually dissimilar and will likely require different witnesses and different physical evidence, consolidation is inappropriate and will only lead to confusion.

Furthermore, the factual dissimilarities in the proceedings between LVGV and Empire are highlighted by Empire's discovery requests to LVGV. Specifically, as set forth above, Empire's discovery requests vary greatly from proceeding to proceeding. Empire has served 42 interrogatories in the 91215208 proceeding yet served only one interrogatory in the 91215415 and 91215246 proceedings. By way of further example, Empire has served twenty-six (26)

¹⁰ *S. Industries Inc. v. Lamb-Weston Inc.*, 45 U.S.P.Q.2d 1293 (T.T.A.B. 1997).

individual requests for admissions upon LVGV in the 91215415 proceeding, yet served fifty (50) individual requests for admissions upon LVGV in the 91215208 proceeding.

The reason the discovery Empire has served to date is so different from proceeding to proceeding is because each Empire mark at issue in each proceeding vis-à-vis LVGV's registrations involves a unique mark/goods/services combination. Therefore, Empire must make unique discovery requests in each proceeding to determine LVGV's basis for any potential confusion between each of Empire's marks/goods/services combinations and each of LVGV's sixteen registrations. Because of the lack of factual commonality between the six proceedings, consolidation is inappropriate and will lead only to unnecessary confusion.¹¹

CONSOLIDATION WILL UNFAIRLY PREJUDICE EMPIRE'S DEFENSE OF ITS MARKS

The Board should further deny LVGV's Motion to Consolidate because consolidation will severely prejudice Empire's ability to defend its marks. The situation is similar to that in *Envirotech v. Solaron*¹² where the Board denied a motion to consolidate three separate opposition proceedings. In *Envirotech*, the applicant objected to the opposer's motion to consolidate three proceedings because, while the parties were the same, the marks were not the same and the goods and services for which registrations were sought differed from those of the opposer. The Board agreed with the applicant and declined to consolidate the matters for the reason that the "[A]pplicant may be at a disadvantage with respect to proving its alleged lack of similarity with opposer's mark based on differences between the design characteristics of the various marks if the oppositions were to be consolidated."¹³

¹¹ See *id.*

¹² *Envirotech Corp. v. Solaron Corp.*, 211 U.S.P.Q. 724, 1981 WL 40495, *1 (T.T.A.B. 1981).

¹³ *Id.* at *3.

As in *Envirotech*, consolidation is inappropriate here. Although the parties are the same in the six opposition proceedings at hand, the marks at issue are not. Moreover, the goods and services associated with Empire's marks at issue vary by class.

Of greater prejudicial concern, which the applicant in *Envirotech* did not need to address, is the sheer volume of marks that LVGV has asserted in an effort to defeat the Empire applications. Whereas the opposer in *Envirotech* only asserted **one** mark in opposition to applicant's registration, here, Empire will need to establish dissimilarity between its mark at issue in each proceeding and all **sixteen** of the registrations LVGV has asserted. As such, the prejudice faced by Empire is much greater than was encountered in *Envirotech*. Based on *Envirotech*, the Board should deny LVGV's Motion to Consolidate. Requiring Empire to undertake such a massive volume of trademark differentiation in one consolidated proceeding is extremely prejudicial.

Empire will also be greatly prejudiced by technicalities that will arise as a result of consolidation. As it currently stands, Empire will have the opportunity to present a trial brief in each of the six opposition proceedings pursuant to 37 C.F.R. §2.128. Empire is permitted 55 pages per proceeding, including table of contents and index of cases cited, to differentiate the **single** Empire mark at issue from the **sixteen** marks that LVGV has asserted in opposition to registration.¹⁴ Therefore, not including reply briefs, in the absence of consolidation, Empire will have a total of 330 briefing pages to distinguish the burdensome number of LVGV marks from the Empire mark in each matter.

¹⁴ See 37 C.F.R. §2.128(b).

If consolidated, Empire will only be permitted to submit a single trial brief.¹⁵ Empire must, therefore, somehow distinguish each of its six marks at issue from each of sixteen LVGV marks in 55 pages. This amounts to forcing Empire to make 96 separate mark comparisons, discuss the relevant evidence and provide pertinent legal analysis in 55 pages. Consolidation is unacceptable for Empire because it handicaps Empire's ability to present appropriate analysis to the Board in Empire's trial brief.

Empire will also be unduly prejudiced by the due date of any consolidated trial brief. Per 37 C.F.R § 2.128, Empire's trial briefs are due 60 days after the close of rebuttal testimony. Currently, in the six separate proceedings, the rebuttal periods are scheduled to close on different days between May 22, 2015, and June 1, 2015. If consolidated, Empire will be forced to file its trial brief addressing all six oppositional matters on the same day, rather than separate, more manageable, cascading deadlines.

The burden of a single trial brief and a single associated deadline for all six of the proceedings tilts far more heavily against Empire than against LVGV. Empire must distinguish each of its mark at issue's good/services/connotations from all sixteen of LVGV's asserted registrations to survive. LVGV, on the other hand, need only to cherry-pick those of its sixteen marks that it believes are most favorable when drafting its trial brief. LVGV can conceivably make such an argument in 55 pages. Empire simply cannot perform 96 separate analyses of both parties' marks in a 55-page trial brief. Consolidation would be highly prejudicial to Empire. The Board should deny LVGV's Motion to Consolidate.

CONCLUSION

¹⁵ See *Dating DNA, LLC v. Imagini Holdings, Ltd.*, Nos. 91185884, 91190912, 2010 WL 1822098, *5 (T.T.A.B. Feb. 22, 2010) (providing a deadline for a **single** trial brief in the consolidated matters).

For the foregoing reasons, the Board should deny LVGV's Motion to Consolidate. In light of the varying facts and anticipated differing testimony and evidence associated with each of Empire's six mark/goods/services as well as wide-ranging goods and services associated with the sixteen registrations that LVGV has asserted in opposition to Empire's trademark applications, organization can only be properly maintained by keeping the proceedings separate.

Consolidation of the six oppositional proceedings between LVGV and Empire will also disproportionately prejudice Empire's ability to defend its respective trademark applications.

Accordingly, Empire respectfully requests that the Board deny LVGV's Motion to Consolidate.

Respectfully submitted,

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Date: 4 September 2014

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
THE TRADEMARK TRIAL AND APPEAL BOARD**

LVGV, LLC,		:	Opposition No.: 91215246
	Opposer	:	
v.		:	"M (stylized)"
		:	
EMPIRE RESORTS, INC.,		:	Class 028
	Applicant	:	
		:	Interlocutory Attorney: Andrew P. Baxley
		:	

CERTIFICATE OF SERVICE

I, Darcy Williams, Esquire, hereby certify that a true and correct copy of the foregoing Answer in Opposition to Opposer's Motion to Consolidate was served on Opposer's Counsel via electronic mail on September 4, 2014 at the addresses below:

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